

UNITED STATES DEPARTMENT OF AGRICULTURE
BEFORE THE SECRETARY OF AGRICULTURE

In re:)	PACA Docket No. D-10- 0010
)	
Z & S Fresh, Inc.)	
)	
Respondent)	Decision Without Hearing by Reason of Consent

Preliminary Statement

This is a disciplinary proceeding under the Perishable Agriculture Commodities Act, 1930, as amended (7 U.S.C. § 499a *et seq.*)(the "Act"), instituted by a Complaint filed by the Deputy Administrator, Fruit and Vegetable Programs, Agricultural Marketing Service, United States Department of Agriculture. The Complaint alleged that during the period January 10, 2009 through July 8, 2009, Respondent Z & S Fresh, Inc. (hereinafter "Respondent") failed to make full payment promptly of the agreed purchase prices for 786 lots of perishable agricultural commodities, which it purchased, received, and accepted in interstate commerce from 46 sellers, in the total amount of \$4,279,914.06. The Complaint also alleged that during the period January 26, 2009, through September 18, 2009, on or about the dates set forth in the Complaint, Respondent failed to remit promptly to 30 growers net proceeds in the total amount of \$2,335,013.83 for 210 lots of perishable agricultural commodities, in respect of transactions Respondent handled in the course of interstate commerce and foreign commerce.

The Complaint requested that the Administrative Law Judge find that Respondent has willfully, flagrantly, and repeatedly violated section 2(4) of the PACA (U.S.C. § 499b(4)), and order that Respondent's license be revoked.

Respondent and Complainant have now agreed to the entry of a Decision Without Hearing by Reason of Consent as to these allegations as set forth herein. Therefore, this Decision Without Hearing by Reason of Consent is entered without further procedure or hearing pursuant to the consent decision provisions of the Rules of Practice Governing Formal Adjudicatory Proceedings Instituted by the Secretary Under Various Statutes (7 C.F.R. § 1.130 *et seq.*) (Rules of Practice).

Findings of Fact

1. Z. & S Fresh, Inc. (hereinafter "Respondent") is a corporation organized and existing under the laws of the State of California. Respondent ceased operations on or about June 6, 2009. Respondent's business and mailing address was 7090 N Marks #104, Fresno, California 93711.

2. At all times material to this complaint, Respondent was licensed as a corporation under PACA License No. 1986-0395. This license was issued to Respondent on December 16, 1985, and is next due for renewal on December 16, 2010. Respondent's license was suspended as of October 8, 2009 for unpaid PACA reparation awards.

3. During the period January 10, 2009, through July 8, 2009, on or about the dates set forth in the Complaint, Respondent failed to make full payment promptly to 46 sellers of the agreed purchase prices, or balances thereof, in the total amount of \$4,279,914.06 for 786 lots of perishable agricultural commodities, which Respondent purchased, received, and accepted in the course of interstate commerce and foreign commerce.

4. During the period January 26, 2009, through September 18, 2009, on or about the dates set forth in the Complaint, Respondent failed to remit promptly to 30 growers net proceeds

in the total amount of \$2,335,013.83 for 210 lots of perishable agricultural commodities, in respect of transactions Respondent handled in the course of interstate commerce and foreign commerce.

Conclusions

Respondent admits the jurisdictional allegations in paragraph II of the Complaint and specifically admits that the Secretary has jurisdiction in this matter, and neither admits or denies the remaining allegations of the Complaint. Respondent waives oral hearing and further procedure, and consents to the entry of the following order.

Order


Respondent has committed willful, flagrant and repeated violations of section 2(4) of the Act (7 U.S.C. 499b(4)).

Respondent's license is revoked pursuant to section 8(a) of the PACA (7 U.S.C. § 499h(a)). This order shall become final upon issuance.

Copies of this order shall be served upon the parties.

Done at Washington, D.C.


this 19th of February, 2010



Administrative Law Judge


For Respondent


Martin Zaninovich
for Z & S Fresh, Inc.

For Complainant


Robert C. Keeney
Deputy Administrator
Fruit and Vegetable Programs
Agricultural Marketing Service


Stephen P. McCarron, Esq.
Attorney for Respondent


Charles L. Kendall, Esq.
Attorney for Complainant